IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.3658 OF 2004

IN

SUIT NO.3554 OF 2004

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Rajan Brijmohan Kapur ...Plaintiff

v/s.

Mahendra Jaichand Kapoor

and ors. ...Defendants

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Mr.D.D. Madon with Mr.Vaishnaw and Mr.R.D.Dave i/b N.N.Vaishnawa & Co. for the Plaintiff.

Mr.Rajiv Narula i/b J. Narula & Associates for Defendant No.2.

Mr.S.B.Pawar i/b S.K. Legal & Associates for the Defendant No.3.

Mr.B.B.Saraf i/b Basant Tilokani & Co. for Defendant No.5.

Mr.Sanjay Jain i/b Ketan A. Chothani for Defendants Nos. 6 to 46 and 48 & 50.

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CORAM: D.K.DESHMUKH, J.

DATED: 20TH JANUARY,2006

P.C.:

1. This Notice of Motion is taken out by the Plaintiff. The case of the Plaintiff is that some premises were held in tenancy rights by a partnership firm by name M/s.Monitex Dye-Prints, of which the Plaintiff and the Defendants Nos. 1 to 4 are the partners. According to the Plaintiff, Defendants Nos. 1, 2 & 3 have unauthorisedly surrendered the tenancy of the premises to the landlord and the landlord has transferred the property to the Defendant No.5. Therefore, a decree of declaration

is sought in the plaint that the surrender of tenancy by Defendants Nos. 1 to 3 is invalid and a decree of possession of the tenanted premises is also sought.

2. A preliminary objection to the maintainability of the suit is raised on behalf of the Defendant No.5 on the ground that in view of the provisions of Section 33 of the Maharashtra Rent Control Act, 1999 grant of relief of decree of possession is within the exclusive jurisdiction of the Small Causes Court.

3. In this view of the matter, therefore, by consent of parties following preliminary issue is framed.

"In view of the provisions of Section 33 of the Maharashtra Rent Control Act,1999 the present suit as framed and filed is maintainable in this Court?"

4. It is an admitted position before me that the Defendant No.5 is the owner of the premises, which according to the Plaintiff were tenanted premises. By prayer clause (c). the Plaintiff is claiming a decree of possession. He is also claiming a decree of declaration that the surrender of tenancy by Defendants Nos. 1 to 3 is unauthorised. Perusal of

the provisions of sub-section 1 of Section 33 shows that a suit by a tenant for a decree of possession of a tenanted premises is within the exclusive jurisdiction of the Small Causes Court. The relief of decree of declaration that the surrender of tenancy by Defendants Nos. 2 to 3 is unauthorised is dependent on the main prayer for a decree of possession. Therefore, in view of the provisions of Section 33, it will not be within the jurisdiction of this court to grant reliefs claimed by prayer clauses (a), (b) & (c). So far as relief claimed by prayer (bb) is concerned, it challenges the further transfer of the premises made by the Defendant No.5. Grant of that relief depends on the Plaintiff establishing that the surrender of the tenancy is illegal and that the Plaintiff is entitled to a decree of possession. As the relief claimed in terms of prayer clause (bb) is dependent on the grant of relief in terms of prayer clause (a), (b) & (c) and as it is not within the jurisdiction of this court to grant relief in terms of prayer clauses (a), (b) & (c) this court will also not have the jurisdiction to grant relief in terms of prayer clause (bb). Preliminary issue is, therefore, answered by holding that the suit in so far as it claims a decree in terms of prayer

clauses a, b, bb & c is not within the jurisdiction of this court and therefore, the suit in so far as it claims relief in terms of prayer clause a, b, bb & c is dismissed.

5. The Plaintiff by prayer clause (d) claims a decree of declaration that the flat which is described in that prayer clause is the property of the partnership firm. This prayer is made on the assumption by the Plaintiff that the money that was received by Defendants Nos. 1, 2 & 3 from surrender of a tenanted premises was used by them for buying this flat and on this basis the Plaintiff prays for a temporary injunction restraining the Defendant Nos. 1,2 & 3 from further transferring the flat. In my opinion, the Plaintiff is not entitled to any interim relief in relation to the flat which is described in prayer clause (d) of the plaint, firstly, because in relation to that flat the Plaintiff has claimed only a decree of declaration. They are not claiming any consequential relief in relation to the flat to which the Plaintiff was entitled to and could have been made by the Plaintiff. Therefore, in the absence of the Plaintiff claiming any consequential reliefs in relation to the flat, in terms of the provisions of

Section 34 of the Specific Relief Act the court will not grant any decree of declaration in relation to the flat. Secondly in the affidavit on behalf of the Defendant No.1, 2 & 3 a clear statement has been made that for purchase of the flat for Rs.90 lakh, an amount of Rs.85 lakh was taken as loan from Allahabad Bank. They relied on certificate issues by the Allahabad Bank. The Plaintiff is not placing anything on record regarding this which will show that this claim which is made by the Defendants Nos. 1 & 2 is false.

6. In this view of the matter, therefore, the Plaintiff is not entitled to any interim order in relation to the flat which is described in prayer clause (d) of the plaint. Notice of Motion is, therefore, disposed of.

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